

3. Defendant the City of Austin is a municipality organized under the laws of Texas and operates the Austin Police Department ("APD"). It may be served through its lawyer Dan Richards, Richards Rodriguez and Skeith LLP, 816 Congress Avenue, Suite 1200, Austin, Texas 78701.

B. ORIGINAL LAWSUIT

4. Plaintiffs, Billie Mercer and Larry Mercer, sued defendants Charles Kleinert and The City of Austin, under a 42 U.S.C. §1983. Defendant, Kleinert filed an answer asserting the affirmative defenses of qualified immunity, Texas Tort Claims Defense, and contributory negligence. Defendant, The City of Austin filed an answer asserting the affirmative defense of sovereign immunity, the Texas Tort Claims Act Defense, contributory negligence, qualified or official immunity of behalf of the Defendant, Kleinert, and that Plaintiff Larry Mercer lacks standing to bring suit.

C. INTERVENOR'S CLAIMS

5. Intervenor has claims for the wrongful death of Larry Eugene Jackson Jr., which resulted from the Defendants' violations of Mr. Jackson's rights under 42 USC §1983, as more fully described in Plaintiffs' Original Complaint, the allegations of which are adopted as if fully set forth herein.

6. In accordance with FRCP 10(c) Plaintiff hereby adopts by reference paragraphs 6 through 45 of Plaintiffs' Original Complaint.

D. DAMAGES

7. As a result of Defendants' conduct as set of in Plaintiff's Original Complaint, Intervenor has suffered pecuniary loss, loss of companionship and society, and mental anguish, both in the past and future.

8. Additionally, Intervenor is entitled to recover her lawful portion of survival damages

awarded to the Estate of Larry Eugene Jackson, which include pain and mental anguish, medical expenses and funeral and burial expenses.

E. EXEMPLARY DAMAGES

9. Because Kleinert's actions were committed either intentionally or recklessly, Intervenor seeks the imposition and recovery of exemplary damages against the Defendant Kleinert.

F. ATTORNEYS FEES

10. Intervenor also seeks the recovery of attorneys fees pursuant to 42 U.S.C. Sec. 1988.

G. JURY REQUEST

11. Plaintiff has previously requested a jury, and Intervenor joins in that request.

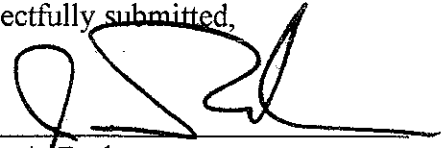
E. PRAYER

12. For these reasons, Intervenor asks that on final hearing, she be awarded a judgment against Defendants for:

- a. compensatory damages, and exemplary damages;
- b. attorney's fees, including expert fees, under 42 U.S.C. §1988;
- c. pre-judgment interest and post-judgment interest at the highest rate allowable under the law;
- d. all costs including, but not limited to, any expert fees; and
- e. all other relief in equity or in law to which Plaintiffs may be entitled.

Respectfully submitted,

By:


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